

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LINDA KABRICH, an individual,

Plaintiff,

vs.

ALLSTATE PROPERTY and  
CASUALTY INSURANCE  
COMPANY d/b/a ALLSTATE  
NORTHWEST PROPERTY, a foreign  
corporation licensed to do business in  
the State of Washington,

Defendant.

No. CV-12-3052-LRS

ORDER RE: DISCOVERY ISSUES

This matter was referred to the undersigned Magistrate Judge by Order filed January 4, 2013. A hearing was conducted telephonically and without recording. The plaintiff was represented by J. Jay Carroll. Defendant was represented by Rory W. Leid, III. TPI Construction LLC (TPI) was represented by Tyler Hinckley.

Pending before the Court are two motions. Defendant's Motion to Compel Discovery (ECF 15) and TPI Construction's Motion for Protective Order (ECF 24). The motions were noted without oral argument. This matter arose because of a subpoena for records deposition served on TPI Construction on August 10, 2012. The subpoena was issued in the US District Court for the EDWA and commanded TPI to appear and produce documents to Defendant Allstate at Allstate's attorneys

1 offices in Seattle in the WDWA and more than 100 miles from the offices of TPI  
2 Construction, LLC in Yakima. Alternative to appearing at the attorney's offices,  
3 TPI was offered the choice of copying and sending the records to the Allstate  
4 attorneys without having to appear. Defendant and TPI do not dispute that the  
5 records sought are material and relevant to the underlying dispute.

6 Claiming that there were many thousands of pages of records and that it  
7 would be burdensome to have to produce all of those documents, TPI requested a  
8 cost of production advance from Allstate of \$2500. Allstate refused payment. The  
9 parties filed the pending motions.

10 In ordering a non-party to produce documents in response to a subpoena in  
11 the context of a motion to compel, the Court has a duty to protect a non-party from  
12 significant expense. Fed.R.Civ.P. 45(c)(2)(B)(ii). Whether a subpoena subjects a  
13 witness to undue burden within the meaning of Rule 45(c)(3)(A)(iv) is a question  
14 of reasonableness of the subpoena. FRCP 45(c)(3)(C) empowers the Court, as an  
15 alternative to quashing the subpoena, to ensure reasonable compensation when  
16 there has been a showing of substantial need for the testimony or materials that  
17 cannot otherwise be met without substantial hardship.

18 Here, TPI Construction says it has located 3,255 pages of materials relevant  
19 to the subpoena so far in its search. There are more to be found. Additionally, TPI  
20 says it has incurred a bill of \$630 from Clifton, Larson and Allen in preparing  
21 documents for production. TPI also says it has an estimate for copying the  
22 materials from The Bindery of \$1740 and, finally, that employees/principals in TPI  
23 have spent in excess of 60 hours of time searching for the materials to be produced.  
24 Defendant says that the materials could be produced at a cost of 10 cents per page  
25 and that the requested \$2500 advance is excessive.  
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1 The Court finds that TPI should receive reasonable compensation for its  
2 efforts at production but that the amounts now sought are in part due to TPI's  
3 disorganization internally in re-locating its offices. The Court ORDERS AS  
4 FOLLOWS:

5 1. Defendant shall pay to TPI within ten business days the amount of \$2500  
6 as a cost of producing all of the documents/materials sought by the subpoena. TPI  
7 has not demonstrated that the subpoena should be quashed. TPI shall bear its own  
8 attorneys fees in this matter.

9 2. TPI shall produce all of the materials relevant to the subpoena not later  
10 than February 15, 2013 by delivering them or mailing them to the offices of  
11 Defendant's attorneys. Defendant shall bear its own attorneys fees in this matter.

12 DATED January 15, 2013.

13  
14 s/James P. Hutton  
15 JAMES P. HUTTON  
16 UNITED STATES MAGISTRATE JUDGE  
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